

Appl. No. 09/762,996
Amdt. Dated June 9, 2005
Reply to Office action of February 14, 2005
Attorney Docket No. P09778-US1
EUS/J/P/05-1153

Amendments to the Drawings:

The attached drawing sheet includes a change to Figure 2.

A Submittal of Drawing Replacement Sheet is being filed concurrently herewith under a separate cover. For your convenience, a copy of that filing is attached.

Attachment: Annotated Sheet of Drawings Showing Changes
Copy of Submittal of Drawing Replacement Sheets

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REMARKS/ARGUMENTS

1.) Claim Amendments

Claims 1, 9-16 and 18-24 have been amended; claims 4-8 have been cancelled; and claims 25-28 have been added. Claims 1-3 and 9-28 remain pending in the application. Favorable reconsideration of the application is respectfully requested in view of the foregoing amendments and the following remarks.

2.) Examiner Objection – Drawings

The Examiner objected to Figure 2 as failing to include reference numeral "60." Submitted herewith is a replacement drawing sheet amending Figure 2 to include the missing reference numeral.

3.) Claim Rejections - 35 U.S.C. §112

The Examiner rejected claims 1-24 as failing to comply with the enablement requirement, asserting that the claims contain subject matter not described in the specification in such a way as to enable one skilled in the art to make and use the invention. The Examiner also rejected claims 9, 16, and 20 as being indefinite due to insufficient antecedent bases of certain claim limitations. The Applicants traverse the rejections.

First, with respect to enablement, the Examiner states that the specification does not "clearly describe about a channel center value MCDn of the parameter of wavelength selective element at which the output power is maximum," as recited in claim 1. The specification describes an embodiment wherein the output power is set to an optimal power level; those skilled in the art will recognize that the invention, as claimed, is a particular case for an optimal power level. Therefore, the Applicants traverse the Examiner's assertion that the claims fail to comply with the 35 U.S.C. §112, paragraph 1.

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Second, with respect to insufficient antecedent bases in claims 9, 16, and 20, the Applicants have amended claims 9 and 16 to correct those claims and provide proper antecedent bases for the limitations noted by the Examiner. With respect to claim 20, claim 16, from which it depends, has been amended to correct the antecedent basis problem noted by the Examiner. The Examiner's reconsideration of those claims is respectfully requested.

4.) Claim Rejections – 35 U.S.C. §102(b)

The Examiner rejected claims 1 and 16 as being anticipated by Kubota Oichi (Patent Abstracts of Japan 09-093223). The Applicants traverse the rejections.

Claim 1 recites:

1. A method for controlling the wavelength of a plurality of channels launched by optical transmission means and received by at least one wavelength selective element in an optical WDM link, the method including:

noting a starting value of a wavelength influencing parameter of said wavelength selective element,

for each channel, determining a channel centre value (MCDn) of said parameter of said wavelength selective element at which the output power of said channel is a maximum,

calculating a mean value (MD) corresponding to the average of said channel centre values (MCDn) for all channels, and

utilising said mean value (MD) to determine a deviation between said launched wavelengths and wavelengths selected by said wavelength selective element indicative of wavelength drift in said optical link, and to correct said wavelength deviation at at least one of said wavelength selective element and said optical transmission means. (emphasis added)

Claim 1 has been amended to incorporate the step of calculating a mean value corresponding to an average of the channel centre values for all channels and utilizing the mean value as an indicator of wavelength drift, which limitation was originally contained in claim 4; claim 16 has been amended in an analogous manner. Accordingly, whereas the Examiner has not otherwise stated a substantive rejection of claim 4, claims 1 and 16, as amended, are patentable over Kubota Oichi.

Kubota Oichi relates to a means of adjusting the control voltage of an optical filter to obtain an optimum received signal. For each wavelength the received wavelength

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signal is measured with a first control voltage value. The control voltage value is then adjusted until the wavelength signal increases to its maximum and then falls below the first control voltage value to a second control voltage value. The mean of the first and second control voltage values is used to determine the control voltage providing the optimum signal power. In contrast, the invention recited in claims 1 and 16 relates to a system wherein a plurality of wavelengths are received by at least one wavelength selective element controlled by the same parameter. While a parameter value corresponding to the maximum channel centre value is determined for each channel, these values are not used to regulate the conditions at the wavelength selective element. Instead, the mean of all channel centre values is determined. In this way, while each channel may not be received at its optimum power, the mean power for all channels will be optimum. Whereas Kubota Oichi teaches determining separate control voltages corresponding to the optimum filter transmission for each wavelength channel, it does not provide the skilled person with a teaching that would lead one of ordinary skill in the art to the combination of features in Applicants' claims. Furthermore, Applicants' invention concerns the tuning of transmitting and receiving elements to the wavelengths of multiple channels. All channels are received by the same filter, and any parameter affecting the filter must be set to a value that is optimal for all channels, which will not necessarily correspond to the optimal value for each individual channel. The mean parameter value is thus important in determining wavelength drift. In contrast, Kubota Oichi discloses the tuning of multiple filters to individual channels. Therefore, Kubota Oichi fails to anticipate claims 1 and 16. Whereas claims 2-3, 9-15 and 25-28 are dependent from claim 1 and claims 17-24 are dependent from 16, respectively, and include the limitations thereof, those claims are also not anticipated.

Finally, the Examiner's attention is directed to MPEP §706.02, wherein it is provided:

II. RELIANCE UPON ABSTRACTS AND FOREIGN LANGUAGE DOCUMENTS IN SUPPORT OF A REJECTION

Prior art uncovered in searching the claimed subject matter of a patent application often includes English language abstracts of underlying documents, such as technical literature or foreign patent documents which

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may not be in the English language. When an abstract is used to support a rejection, the evidence relied upon is the facts contained in the abstract, not additional facts that may be contained in the underlying full text document. **Citation of and reliance upon an abstract without citation of and reliance upon the underlying scientific document is generally inappropriate where both the abstract and the underlying document are prior art.** See *Ex parte Jones*, 62 USPQ2d 1206, 1208 (Bd. Pat. App. & Inter. 2001) (unpublished). To determine whether both the abstract and the underlying document are prior art, a copy of the underlying document must be obtained and analyzed. If the document is in a language other than English and the examiner seeks to rely on that document, a translation must be obtained so that the record is clear as to the precise facts the examiner is relying upon in support of the rejection. The record must also be clear as to whether the examiner is relying upon the abstract or the full text document to support a rejection. The rationale for this is several-fold. It is not uncommon for a full text document to reveal that the document fully anticipates an invention that the abstract renders obvious at best. The converse may also be true, that the full text document will include teachings away from the invention that will preclude an obviousness rejection under 35 U.S.C. 103, when the abstract alone appears to support the rejection. An abstract can have a different effective publication date than the full text document. Because all patentability determinations are fact dependent, obtaining and considering full text documents at the earliest practicable time in the examination process will yield the fullest available set of facts upon which to determine patentability, thereby improving quality and reducing pendency. When both [emphasis in original] the abstract and the underlying document qualify as prior art, the underlying document should normally be used to support a rejection. In limited circumstances, it may be appropriate for the examiner to make a rejection in a non-final Office action based in whole or in part on the abstract only without relying on the full text document. In such circumstances, the full text document and a translation (if not in English) may be supplied in the next Office action. (emphasis added).

Therefore, if the Examiner wishes to maintain a rejection based on Kubota Oichi, a full text English translation of Kubota Oichi should be provided prior to a final rejection.

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CONCLUSION

In view of the foregoing amendments and remarks, the Applicants believe all of the claims currently pending in the Application to be in a condition for allowance. The Applicants, therefore, respectfully request that the Examiner withdraw all rejections and issue a Notice of Allowance for claims 1-3 and 9-28.

The Applicants request a telephonic interview if the Examiner has any questions or requires any additional information that would further or expedite the prosecution of the Application.

Respectfully submitted,



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